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HIGH COURT OF CHHATTISGARH AT BILASPUR

DIVISION BENCH

CORAM : HON'BLE SHRI H.L. DATTU, CJ.
HON'BLE SHRI D.R. DESHMUKH, J.

Writ Petition (C) No.2687 of 2007

PETITIONER : Suresh Kumar Agrawal A - V Class Contractor, M.P.P.W.D., aged about 46 years, S/o Late Shri Chhagan Lal Agrawal, R/o Bhua-Bichhia, Distt. Mandla (M.P.)

Through – General Power of Attorney Holder, Dilip Kumar Modi, aged about 47 years, S/o Shri Lajpat Rai Modi, R/o Behind Bramhakumari Ashram, C.V. Raman Ward, Seoni (M.P.)

Versus

RESPONDENTS

1. Govt. of Chhattisgarh through Secretary, Panchayat & Rural Development Department, Dau Kalyan Singh Bhawan, Mantralaya, Raipur (C.G.)
2. The Chief Engineer, Pradhan Mantri Gram Sadak Yojna, Rural Road Development Agency, Civil Lines Raipur (C.G.)
3. The Executive Engineer – Cum – Member Secretary, Project Implementation Unit, Pradhan Mantri Gram Sadak Yojna, Distt. Rajnandgaon (C.G.)

Writ Petition U/A 226 of the Constitution of India.

Present : Shri DN Prajapati, counsel for the petitioner.
Shri Sumesh Bajaj, GA for the State.

ORAL ORDER
(Passed on 2nd May, 2007)

The following oral order of the Court was passed by **H.L.Dattu, C.J. :**

The petitioner is A-V Class Contractor in MP PWD. In this petition filed under Article 226 of the Constitution of India, the petitioner seeks a writ in the nature of certiorari to quash the order passed by the 3rd respondent dated 05.01.2007. By the impugned order, the 3rd respondent has forfeited the earnest money deposited by the petitioner.

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(2) The facts in nutshell are :

The petitioner was one of the participants in the tender process invited by the respondents. He had offered his bid and since his bid was the highest bid, the respondents have accepted the same and thereafter, they have intimated the petitioner to execute the agreement as required under clause 17.6 of the conditions of the tender form. Even after expiry of 90 days, since the petitioner did not sign the agreement nor furnish the required performance security, the respondents have invoked clause 17.6 and have forfeited the earnest money deposited by the petitioner. Aggrieved by the said action of the respondents the petitioner is before us in this writ petition.

(3) Shri DN Prajapati, learned counsel appearing for the petitioner would submit that without granting time as envisaged under clause 16.2 of the conditions of the tender form, the respondents could not have exercised their right under clause 17.6 of the conditions of the tender form.

(4) Opening words of the clause 16.2 of the conditions of tender form would say that it is only in exceptional circumstances prior to expiry of the original time limit, the employer may request the highest bidder to extend the period of validity for a specified additional period. In our opinion, said clause would not come in aid of the petitioner in any manner whatsoever. In fact, clause 17.6 of the conditions of the tender form would envisage that the earnest money may be forfeited by the person who invites tender immediately after the highest bidder is notified that his bid has been accepted, and if the bidder fails within the specified time limit either to sign the agreement or to furnish required performance certificate.

(5) In the instant case, after accepting the highest bid offered by the petitioner, the respondents have intimated the petitioner to sign the agreement and since the petitioner did not sign the agreement within the time specified, the third respondent has passed an order dated 05.01.2007. In our opinion, there is no arbitrary action on the part of the respondents, which would call for our

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interference. Therefore, the writ petition requires to be rejected and it is rejected.

Ordered accordingly.

Sd/-
Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge